

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHAWN MITCHELL,	§
	§
Defendant Below-	§ No. 256, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID 1007023229
Plaintiff Below-	§
Appellee.	§

Submitted: November 18, 2011

Decided: January 12, 2012

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 12th day of January 2012, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) A Superior Court jury convicted the defendant-appellant, Shaun Mitchell, of multiple criminal charges, including attempted first degree robbery, two counts of possession of a firearm during the commission of a felony and related offenses. The Superior Court sentenced Mitchell to a total period of seventeen years at Level V incarceration, to be suspended after serving eleven years for decreasing levels of supervision. This is Mitchell's direct appeal.

(2) Mitchell's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Mitchell's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Mitchell's attorney informed him of the provisions of Rule 26(c) and provided Mitchell with a copy of the motion to withdraw and the accompanying brief. Mitchell also was informed of his right to supplement his attorney's presentation. Mitchell responded with a letter raising a single legal issue for the Court's consideration. The State has responded to Mitchell's argument, as well as to the position taken by Mitchell's counsel, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(4) The trial record fairly reflects that, on July 25, 2010 at approximately one o'clock in the morning, Sarah Fuentes was sitting in a car

¹ *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

in a parking lot of a convenience store in New Castle County, Delaware waiting for her companions to return. A man wearing a black hat and black bandanna covering his lower face approached the car she was sitting in and attempted to rob her. During the incident, Mitchell fired two shots at the car, striking Fuentes in the leg. Fuentes initially told police that she did not think she could identify her assailant because most of his face had been covered. Police, therefore, did not show her a photographic line-up. Later, however, after the store's surveillance video was recovered, Fuentes was able to identify her assailant based on his clothing and on his eyes, which she stated she would "never forget." Store employees were able to identify Mitchell as the man on the video,² and Fuentes was able to identify Mitchell in court as her assailant. After being picked up by police, Mitchell himself admitted in a taped statement that he had committed the attempted robbery and shooting.

(5) On appeal, Mitchell's only contention is that evidence was insufficient to prove that he was the assailant. In reviewing such a claim, this Court must determine whether *any* rational trier of fact, viewing the evidence in the light most favorable to the State, could have found the

² The video, which was taken around the time of the robbery, did not actually show the robbery. Rather, it established that Mitchell was in the store at about the time of the robbery wearing clothes that Fuentes could identify as being that of her assailant's.

defendant guilty beyond a reasonable doubt.³ The gist of Mitchell's argument appears to be that the jury should have believed Fuentes' initial statement to police that she could not identify the shooter because his face was covered. Moreover, Mitchell contends that the surveillance tape did not establish Mitchell as the shooter and only proved that he was at the convenience store around the time of the incident.

(6) We disagree with Mitchell's assertions. It is the sole job of the jury to determine the weight to be given to the evidence and to resolve any conflicts in the testimony.⁴ In this case, the jury had discretion to believe Fuentes' in-court identification of Mitchell as her assailant, in addition Mitchell's own out-of-court admission. Under the circumstances, we find the evidence against Mitchell was more than sufficient to sustain his convictions beyond a reasonable doubt.

(7) This Court has reviewed the record carefully and has concluded that Mitchell's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Mitchell's counsel has made a conscientious effort to examine the record and the law and has properly determined that Mitchell could not raise a meritorious claim in this appeal.

³ *Word v. State*, 801 A.2d 927, 929 (Del. 2002) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

⁴ *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice